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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

COMMONWEALTH LAND TITLE INSURANCE )	Case No. 2:13-cv-01837-MMD-PAL
COMPANY, a Nebraska Corporation, )	
Plaintiff, )	
vs. )	
IOTA INDIGO, LLC, a Nevada Limited Liability )	<b>STIPULATED PROTECTIVE</b>
Company, DOES I-X; and ROE BUSINESS )	<b>ORDER</b>
ENTITIES XI-XX )	
Defendant. )	

To promote the efficient administration of this case and to adequately protect information and material entitled to be kept confidential, and to ensure that protection is afforded only to material so entitled, the undersigned parties hereby stipulate and agree, and request that the Court, pursuant to its authority under Rule 26(c) of the Federal Rules of Civil Procedure, order as follows:

**1. Nondisclosure of Confidential Documents and Confidential Information.**

Except as provided herein, Confidential Documents or Confidential Information, as defined herein, shall not be disclosed to any person.

**2. Definitions and Designation of Confidential Materials.**

The term “document” as used herein shall include all documents and things as described in Fed. R. Civ. P. 34(a). A “Confidential Document” means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings it to the attention of a

1 reasonable examiner): **“Confidential.”** “Confidential Information” means any oral or non-  
2 documentary information designated confidential at any deposition or hearing within 20 days  
3 of such deposition or hearing by the declarant or his or her counsel; provided that any  
4 designation of oral or non-documentary information as confidential shall be specific as to the  
5 portion to be protected. “Confidential Materials” means Confidential Documents and/or  
6 Confidential Information. “Producing Party” is any party or non-party who provides or has  
7 provided Confidential Materials under the terms of this Order.

8 **3. Limitation on Matters Subject to Confidentiality.** Any party may designate  
9 documents or information as Confidential, but only after an attorney for the party, or the party  
10 itself if appearing pro se, has determined in good faith that the documents or information  
11 contain consumer nonpublic personal information (as defined by 15 U.S.C. § 6809), trade  
12 secrets or other confidential or proprietary research or other proprietary business information;  
13 matters related to company security; current and projected sales data; information related to  
14 sales and marketing strategies; information related to pricing and pricing strategies;  
15 information which gives the party a competitive advantage which is not typically disclosed or  
16 known; information related to current, former or prospective customers and/or clients;  
17 production data and information; information relating to mergers and acquisitions; personnel  
18 records and information; financial information not publicly filed with any federal or state  
19 regulatory authority; any information or documents that are subject to a confidentiality  
20 provision or agreement with a third party, and information related to any complaint and/or  
21 investigation not publicly filed with any federal or state regulatory authority. If any party  
22 believes material not described above should nevertheless be considered confidential, it may  
23 seek a stipulation among the parties to treat such document or information as Confidential or it  
24 may make an appropriate application to the Court. Such application shall only be granted for  
25 good cause shown. Material shall not be treated as Confidential, whether or not it has been  
26 designated as such, if it is available in a public record, generally known or available to the  
27 public or in the industry of the producing party, or was available to the recipient on a non-  
28 confidential basis from a person other than the discloser or employee of the discloser who is

1 not otherwise bound by this Confidentiality Stipulation and Agreement or is not otherwise  
2 prohibited from transmitting the information to the recipient, or was disclosed with the consent  
3 of the discloser.

4 **4. Permissible Disclosure.** Confidential Materials shall only be shown to or shared  
5 with (1) counsel for the parties or their agents; (2) the parties; (3) the parties' experts and their  
6 agents; (4) actual or proposed witnesses; (5) court personnel; (6) any party's internal public  
7 auditor, regulator, or other governmental entity with jurisdictional authority over the recipient;  
8 (7) any insurance company potentially responsible for indemnifying a party for defense costs or  
9 a judgment in this proceeding; (8) any arbitrator or mediator if this case is submitted to  
10 arbitration or mediation; or (9) other persons whom the attorneys deem reasonably necessary to  
11 review the documents for the prosecution or defense of this lawsuit. Nothing in this  
12 Confidentiality Stipulation and Agreement shall restrict the use of Confidential Materials  
13 during trial, subject to an objection of a party opposing the introduction of Confidential  
14 Materials as evidence during trial. Each person who is permitted to see or is informed of  
15 Confidential Materials shall be shown a copy of this Confidentiality Stipulation and Agreement  
16 and shall be advised, by counsel showing the person Confidential Materials, of this  
17 Confidentiality Stipulation and Agreement and each person's obligation to maintain the  
18 Confidential designation. For each such person, he/she shall be required to confirm their  
19 understanding and agreement to abide by the terms of this Order by signing a copy of Exhibit A  
20 hereto.

21 **5. Declassification.** If a party believes that material designated or sought to be  
22 designated Confidential by the producing party does not warrant such designation, the party  
23 shall first make a good-faith effort to resolve such a dispute with opposing counsel. In the  
24 event that such a dispute cannot be resolved by the parties, either party may apply to the Court  
25 for a determination as to whether the designation is appropriate. The burden rests on the party  
26 seeking Confidentiality to demonstrate that such designation is proper.

27 **6. Withdrawal of Confidentiality.** A party may withdraw its own "Confidential"  
28 designation of any Confidential Materials, except to the extent that it contains consumer

1 nonpublic personal information (as defined by 15 U.S.C. § 6809). Such withdrawal may be  
 2 made by filing (not under seal) its own Confidential Materials or made in a writing served upon  
 3 the parties to this action that specifically identifies the Confidential Materials that shall no  
 4 longer be treated as “Confidential” pursuant to this Confidentiality Stipulation and Agreement.  
 5 Any withdrawal under this paragraph is limited to the material filed or specified.

6 **7. Subpoena by Other Courts or Agencies.** This Confidentiality Stipulation and  
 7 Agreement shall not prevent the production of Confidential Materials if another court or  
 8 administrative agency subpoenas or orders production of Confidential Materials that a party has  
 9 obtained under the terms of this Confidentiality Stipulation and Agreement. If ordered to  
 10 produce Confidential Materials by another court or administrative agency, that party shall give  
 11 written and telephone notice to counsel for the Producing Party within three (3) business days  
 12 after receipt of the subpoena or other compulsory process identifying the Confidential  
 13 Materials sought and enclosing a copy of the subpoena or other compulsory process. If the  
 14 Producing Party timely seeks a protective order, the party to which the subpoena or other  
 15 compulsory process was issued or served shall not produce the Confidential Materials called  
 16 for prior to receiving a court order or the consent of the Producing Party. In the event that such  
 17 Confidential Materials is produced to the non-party, such material shall still be treated in  
 18 accordance with its designation as “Confidential” by the Parties to this Order.

19 **8. Filing.** If any party intends to file with the Court or offer into evidence any  
 20 document claimed to reflect Confidential Material, the Filing Party shall file a motion to seal in  
 21 compliance with the Ninth Circuit’s directives in *Kamakana v. City and County of Honolulu*,  
 22 447 F.3d 1172 (9th Cir. 2006) and the Court’s electronic filing procedures provided for in Rule  
 23 10-5(b) of the Local Rules of Practice of the United States District Court, District of Nevada  
 24 (“L.R.”), which provides that,

25 Unless otherwise permitted by statute, rule or prior Court order,  
 26 papers filed with the Court under seal, and shall be filed in  
 27 accordance with the Court’s electronic filing procedures. If papers  
 28 are filed under seal pursuant to prior Court order, the papers shall  
 bear the following notation on the first page, directly under the  
 case number: “FILED UNDER SEAL PURSUANT TO COURT  
 ORDER DATED \_\_\_\_\_.” All papers filed under seal will

1 remain sealed until such time as the Court may deny the motion to  
 2 seal or enter an order to unseal them, or the documents are  
 unsealed pursuant to Local Rule.

3 *Id.*

4 The Ninth Circuit has held that there is a presumption of public access to judicial files  
 5 and records, and that parties seeking to maintain the confidentiality of documents attached to  
 6 nondispositive motion must show good cause exists to overcome the presumption of public  
 7 access. *Id.* at 1180. If the sole ground for a motion to seal is that the Producing Party has  
 8 designated a document as subject to protection pursuant to the stipulated protective order, the  
 9 movant must notify the Producing Party at least seven days prior to filing the designated  
 10 documents. The Producing Party must then make a good faith determination if the relevant  
 11 standard for sealing is met. To the extent the Producing Party does not believe the relevant  
 12 standard for sealing can be met, it shall indicate that the document may be filed publicly no  
 13 later than four days after receiving notice of the intended filing. To the extent the Producing  
 14 Party believes that the relevant standard for sealing can be met, it shall provide a declaration  
 15 supporting that assertion no later than four days after receiving notice of the intended filing.  
 16 The filing party shall then attach that declaration to its motion to seal the designated material.  
 17 If the Producing Party fails to provide such a declaration in support of the motion to seal, the  
 18 filing party shall file the motion to seal so indicating and the Court may order the document  
 19 filed in the public record.<sup>1</sup>

20 **9. Use.** Persons obtaining access to Confidential Materials under this Confidentiality  
 21 Stipulation and Agreement shall use the documents and information only for the purposes of  
 22 this litigation, including the prosecution, defense, settlement, and appeal thereof, or for any  
 23 other litigation or dispute involving the Producing Party (or any of its affiliates) and the  
 24 recipient (or any of its affiliates) of Confidential Materials.

25 **10. Non-Termination.** The provisions of this Confidentiality Stipulation and  
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27 <sup>1</sup> In the event of an emergency motion, the above procedures shall not apply. Instead, the movant shall file a motion  
 28 to seal and the Producing Party shall file a declaration in support of that motion to seal within three days of its filing.  
 If the Producing Party fails to timely file such a declaration, the Court may order the document filed in the public  
 record.

1 Agreement shall not terminate upon dismissal of this litigation. After the final conclusion of  
2 all aspects of this litigation, Confidential Materials and all paper and/or electronic copies of the  
3 same (other than exhibits of record) shall be, at the discretion and request of the producing  
4 party, (1) returned to the party or person that produced such documents, or (2) destroyed and  
5 certified under oath as destroyed to the producing party or the producing party's attorney of  
6 record, provided that such documents are not being used in or relate to any other litigation or  
7 dispute between the producing party (or any of its affiliates) and the recipient (or any of its  
8 affiliates).

9 **11. Modification Permitted.** Nothing in this Confidentiality Stipulation and  
10 Agreement shall prevent any party or other person from seeking modification of such  
11 Confidentiality Stipulation and Agreement or from objecting to discovery that it believes to be  
12 otherwise improper. The parties shall not be free, however, to modify paragraph eight in  
13 contravention of L.R. 26.2 without court approval.

14 **12. Additional Parties.** In the event that any additional persons or entities become  
15 parties to this litigation or make an appearance, no such additional party shall have access to  
16 Confidential Materials until the party has executed and filed with the Court a copy of this  
17 Confidentiality Stipulation and Agreement, or other agreement to be bound thereby.

18 **13. Responsibility of Attorneys.** The attorneys of record are responsible for  
19 employing reasonable measures, consistent with this Confidentiality Stipulation and  
20 Agreement, to control duplication of, access to, and distribution of copies of Confidential  
21 Materials. Parties shall not duplicate any Confidential Materials except for using as working  
22 copies and for filing in a manner consistent with the terms of this Confidentiality Stipulation  
23 and Agreement and with the applicable Federal Rules of Civil Procedure.

24 **14. No Waiver.**

25 (a) Review of Confidential Materials by counsel, experts, or consultants for the litigants in  
26 this litigation shall not waive the confidentiality of the materials or any objection to production  
27 permitted by the Federal Rules of Civil Procedure.

28 (b) The inadvertent, unintentional, or *in camera* disclosure of Confidential Materials shall

not, under any circumstances, be deemed a waiver, in whole or in part, of any party's claim of confidentiality.

(c) Pursuant to Fed. R. E. 502(d), any privilege or protection afforded to Confidential Documents is not waived by disclosure.

**15. Reservation of Rights.** Nothing contained in this Confidentiality Stipulation and Agreement, and no action taken pursuant to it shall prejudice the right of any party to contest the alleged relevancy, admissibility, or discoverability of the documents and information sought.

**16. Non-Parties.** Non-parties who produce documents pursuant to this Order shall have the benefit of this Order, and shall be entitled to enforce its terms, if they agree to be bound hereby.

STIPULATED AND AGREED.

DATED this 7<sup>th</sup> day of October, 2015.

FIDELITY NATIONAL LAW GROUP

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Attorneys for Defendant

**ORDER**

IT IS SO ORDERED.

  
UNITED STATES MAGISTRATE JUDGE

DATED: October 27, 2015

**EXHIBIT A**

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, hereby certify:

1. I have read the Stipulated Protective Order (the "Order") in the lawsuit styled: *Commonwealth Land Title Insurance Company v. IOTA Indigo, LLC*, Case No. 2:13-cv-01837-MMD-PAL in the United States District Court, District of Nevada. A copy of the Order was given to me.

2. Any documents, information, materials, or testimony which are protected under the Order entered in this case and designated as Confidential Material will be used by me only in connection with the above-captioned matter.

3. I will not disclose or discuss such protected Confidential Material with any person other than those individuals permitted by the Order to review such materials.

4. I understand that the use of such Confidential Material, documents, information, or testimony obtained by me (or any portions or summaries thereof) in any manner contrary to the provisions or the Order may subject me to sanctions by the Court for violating the Order.

Signature: \_\_\_\_\_

Please Print or Type the Following:

Name: \_\_\_\_\_

Title and Affiliation: \_\_\_\_\_

Address: \_\_\_\_\_

—

Telephone Number: \_\_\_\_\_